

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**COMPLAINT NO. R2-2006-0072
MANDATORY MINIMUM PENALTY
IN THE MATTER OF
CITY OF BENICIA, SOLANO COUNTY**

Pursuant to California Water Code Section 13385, this complaint is issued to the City of Benicia (hereafter Discharger) to assess \$6,000 in mandatory minimum penalties, based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. 01-096 (NPDES No. CA 003091) for the period between January 1, 2003 and October 1, 2006.

The Executive Officer finds the following:

1. On August 15, 2001, the California Regional Water Quality Control Board (Water Board) adopted Order No. 01-096 for the Discharger, to regulate discharges of waste from its facility. Order No. 01-096 became effective on September 1, 2001.
2. Water Code Section 13385(h)(1) requires the Water Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.
3. Water Code Section 13385(h)(2) defines a "serious violation" as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
4. Water Code Section 13385(i) requires the Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the Discharger does any of the following four or more times in any six consecutive months:
 - (a) Violates a waste discharge requirement effluent limitation.
 - (b) Fails to file a report pursuant to Section 13260.
 - (c) Files an incomplete report pursuant to Section 13260.
 - (d) Violates a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
5. Water Code Section 13385(l) allows the Water Board, with the concurrence of the Discharger, to direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board. The Discharger may undertake an SEP up to the full amount of the penalty for liabilities less than or equal to \$15,000. If the penalty amount exceeds \$15,000, the maximum penalty amount that may be expended on a SEP may not exceed \$15,000 plus 50 percent of the penalty amount that exceeds \$15,000.
6. Effluent Limitations
Order No. 01-096 includes the following applicable effluent limitations:

EFFLUENT LIMITATIONS (Order No. 01-096)

The effluent shall not exceed the following limits:

- Oil and Grease, 10 mg/l monthly average;
- Total Chlorine residual, 0.0 mg/l instantaneous maximum;
- Cyanide, 25 µg/l interim monthly average;
- An 11-sample median value of not less than 90 percent survival in bioassay test organisms.

7. Summary of Effluent Limit Violations

During the period between January 1, 2003, and November 1, 2006, the Discharger had six violations of its effluent discharge limits. These violations include two bioassay test failures, two cyanide effluent limit violations, one chlorine residual effluent limit violation, and one oil and grease monthly effluent violation. The details of these limit violations are summarized in table 1 and discussed below.

8. The two 11-sample median values of not less than 90 percent survival are not subject to MMPs, because under Section 13385(i)(1)(D), toxicity effluent limitation violations are exempt if the permit contains pollutant-specific effluent limits for toxic pollutants, which is the case for the Discharger. Water Board staff has the discretion to recommend that the Water Board assess additional liability for this violation. In this case, Water Board staff recommends no additional penalty because the Discharger has identified the cause of the acute toxicity violation (ammonia), and has modified its process (by adjusting the pH in the bioassay procedure) to alleviate the problem.
9. The Discharger investigated the cause of the June 14, 2003, and September 25, 2004, cyanide violations, and found unusually high cyanide levels at a lift station located downstream from three commercial laboratories in the City of Benicia's industrial park. The Discharger addressed the problem through enforcement action on the source in its pretreatment program, and there have been no other cyanide violations since. The cyanide effluent limit violation is defined as a serious violation because cyanide is a Group II pollutant and the violation exceeds the effluent limitation by 20 percent or more. This violation is subject to a \$3,000 MMP under Section 13385(h). Water Board staff finds the Discharger was proactive in its investigation of this cyanide exceedance and believes that the minimum penalty for this violation is appropriate.
10. On May 3, 2005, the Discharger experienced a high chlorine residual (1.6 mg/l) for one hour and 25 minutes. The cause of the violation was determined by the Discharger to be operator error. The Discharger has developed a standard operating procedure in order to minimize the probability of a recurrence, and has put in place an automated control within its SCADA system that will automatically shut off effluent discharge in the event of a high residual. The chlorine residual instantaneous maximum effluent limit violation is defined as a serious violation because chlorine is a Group II pollutant and the violation exceeds the effluent limitation by 20 percent or more. This violation is subject to a \$3,000 MMP under Section 13385(h). The minimum penalty is appropriate in this case because the Discharger implemented measures to correct the problem.
11. Oil and Grease is a Group I pollutant. The one oil and grease violation exceeds the effluent limitation by less than 40%, so it is not subject to an MMP. It was also an isolated incident so no other enforcement is warranted at this time.

12. Water Code Exception

Water Code Section 13385(j) provides some exceptions related to the assessment of MMPs for effluent limit violations. None of the exceptions apply to the violations cited in this Complaint.

13. Assessment of MMPs

Two of the three violations are subject to an MMP. The total MMP amount is \$6,000.

14. Suspended MMP Amount

Instead of paying the full penalty amount to the State Water Pollution Cleanup and Abatement Account, the Discharger may spend an amount of up to \$6,000 on an SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

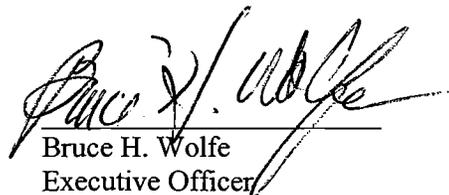
15. SEP Categories

If the Discharger chooses to propose an SEP, the proposed SEP shall be in the following categories:

1. Pollution prevention;
2. Pollution reduction;
3. Environmental clean-up or restoration; and
4. Environmental education.

THE CITY OF BENICIA IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed MMPs in the total amount of \$6,000.
2. The Water Board will hold a hearing on this Complaint on January 23, 200~~6~~⁷, unless the Discharger waives the right to a hearing by signing the included waiver and checks the appropriate box. By doing so, the Discharger agrees to:
 - a) Pay the full penalty of \$6,000 within 30 days after the signed waiver becomes effective, or
 - b) Propose an SEP in an amount up to \$6,000. Pay the balance of the penalty within 30 days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$6,000.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by 5:00 p.m., December 20, 2006, to the Executive Officer for conceptual approval. Any SEP proposal shall also conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002 and the attached Standard Criteria and Reporting Requirement for Supplemental Environmental Project. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended penalty of \$6,000. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.
4. The signed waiver will become effective on the day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.
5. If a hearing is held, the Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider imposition of a penalty.



Bruce H. Wolfe
Executive Officer

NOV 14 2006

Date

Attachments: Waiver
Table 1: Violations
Standard Criteria and Reporting Requirement for Supplemental Environmental Project

WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your waiver is due no later than December 20, 2006.

- Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2006-0072 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

- Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2006-0072, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$6,000 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted no later than December 20, 2006. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)

Signature

Date

Title/Organization

Table 1 - VIOLATIONS

Item	Date of Violation	Effluent Limitation Described	Effluent Limit	Reported Value	Type of Violations ²	Penalty ³	Start of 180 days ¹
1	2/3/2003	E-001 except where noted 11-Sample 90% Moving Median bioassay requirement	90	88			8/5/02
2	3/25/2003	11 Sample 90% Moving Median bioassay requirement	90	85			9/27/02
3	6/14/2003	Cyanide, interim maximum daily ($\mu\text{g/L}$)	25	26	C1		12/16/02
4	9/25/04	Cyanide, interim maximum daily ($\mu\text{g/L}$)	25	30	C1 (also S)	\$3,000	3/27/04
5	5/03/05	Chlorine Residual effluent instantaneous maximum mg/l	0	1.6	C1 (also S)	\$3,000	11/05/04
6	07/31/05	Oil and Grease monthly average mg/l	10	10.4	C2		2/02/05

¹ This column documents the start date for assessing chronic violations. As indicated in Finding No. 4, Water Code Section 13385(i) requires the Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations if the Discharger violates an effluent limit four or more times in any six consecutive months.

² C = Chronic – The number that follows represents the number of chronic violations in the past 180 days; S = Serious.

³ As indicated in finding No. 8, toxicity effluent limitation violations are not fined when the waste discharge requirements contain pollutant-specific effluent limitations for toxic pollutants.